

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

FREDERICK J. FISCHER,

Plaintiff,

v.

DANIEL GRIFFITH, et al.,

Defendants.

CASE NO. C10-0106-JCC

ORDER

The Court, having reviewed Plaintiff's Amended Complaint (Dkt. No. 10), the Report and Recommendation of U.S. Magistrate Judge Mary A. Theiler (Dkt. No. 42), Plaintiff's objections (Dkt. No. 44), and the remaining record, adopts the Report and Recommendation.

**I. BACKGROUND**

Plaintiff is an inmate at Monroe Correctional Complex (MCC). He alleges that Defendant Griffith—the only named defendant here—and other correctional officers at MCC knew that another inmate planned to assault Plaintiff but did nothing to prevent the attack, which occurred on November 20, 2007. (Dkt. No. 10 at 2, 6, 7.) Plaintiff was hospitalized as a result of the attack and was placed in administrative segregation as a security measure on his return to MCC.

Plaintiff filed this action under 42 U.S.C. § 1983 in January 2010. Defendant Griffith moved for summary judgment in April 2011, arguing that Plaintiff failed to exhaust his administrative remedies as required under the Prison Litigation Reform Act, 42 U.S.C. §

1 1997e(a). Defendant Griffith also asserted qualified immunity and argued that Plaintiff failed to  
2 raise a genuine issue of fact as to essential elements of his claim. Judge Theiler recommends  
3 construing the motion for summary judgment in part as a motion to dismiss, *see Wyatt v.*  
4 *Terhune*, 315 F.3d 1108, 1119 (9th Cir. 2003), and dismissing the action for failure to exhaust  
5 administrative remedies available in prison. (Dkt. No. 42.) Plaintiff submitted objections to  
6 Judge Theiler's Report and Recommendation. (Dkt. No. 44.)

## 7 **II. DISCUSSION**

8 The Court must make a de novo determination of those portions of a magistrate judge's  
9 report or recommendations to which a party objects. 28 U.S.C. § 636(b)(1).

10 Plaintiff objects to the Magistrate Judge's conclusion that he failed to exhaust his  
11 administrative remedies. Plaintiff argued in opposition to summary judgment that he had been  
12 told by a prison grievance coordinator during a review of his administrative segregation that the  
13 assault was not "grievable." (Dkt. No. 33 at 2-3.) In rejecting that argument, the Magistrate  
14 Judge noted not only that the record undermined Plaintiff's allegation but also that "nothing  
15 about the administrative segregation review process restricts an inmate from exercising his right  
16 to file a grievance about the conduct of a correctional officer or another inmate." (Dkt. No. 42 at  
17 7.) Plaintiff now objects that the Court "does not look to the Administrative Segregation Review  
18 Process to determine the failure to exhaust issue, it looks to the Grievance Process." (Dkt. No. 44  
19 at 2.) Plaintiff notes that under the grievance process established by the Washington State  
20 Department of Corrections, "Administrative Segregation Hearings actions and decisions" are not  
21 grievable. (Dkt. No. 33 at 8.)

22 Plaintiff's objection is without merit. The actions and decisions of the entity that  
23 reviewed Plaintiff's administrative segregation are not at issue here, as Plaintiff was placed in  
24 administrative segregation after the attack and for his own safety. Rather, the record establishes  
25 that Plaintiff could have filed a grievance related to correctional officers' knowledge or handling  
26 of the assault. (Dkt. No. 37 at 2.) There is no dispute that Plaintiff did not file such a grievance.

1 Plaintiff therefore failed to exhaust his administrative remedies, and dismissal of his claim  
2 without prejudice is appropriate.

3 Plaintiff also argues that “disputes between Plaintiff and Defendants regarding what was  
4 said” raise factual issues requiring trial. (Dkt. No. 44 at 2.) But such disputes must be addressed  
5 through the prison grievance system before Plaintiff may seek relief in this Court. *See* 42 U.S.C.  
6 § 1997e(a).

### 7 **III. CONCLUSION**

8 For the foregoing reasons, the Court ADOPTS the Report and Recommendation of the  
9 Magistrate Judge (Dkt. No. 42). This matter is DISMISSED without prejudice for failure to  
10 exhaust administrative remedies as required by 42. U.S.C. § 1997e(a).

11 DATED this 2nd day of December 2011.

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A handwritten signature in black ink, reading "John C. Coughenour", is written over a horizontal line.

John C. Coughenour  
UNITED STATES DISTRICT JUDGE